PRIVY COUNCIL APPEAL

PUBLIC PROSECUTOR v. OH KENG SENG

[Federal Court Criminal Appeal No. 36 of 1976]

The petition of the respondent to His Majesty the Yang di-Pertuan Agong for special leave to appeal in the above matter ([1977] 2 M.L.J. 207) was dismissed by the Privy Council on February 9, 1978.

Petition dismissed.

PRIVY COUNCIL REPORTS

CHAN CHOW WANG v. LAW SOCIETY OF SINGAPORE

[Privy Council (Lord Diplock, Lord Russell of Killowen and Lord Scarman) May 3 and 23, 1978]

[Privy Council Appeal No. 17 of 1976]

Legal Profession — Advocates and Solicitors — Disciplinary proceedings — Complaint received by Inquiry Committee — Action taken on complaint — Complainant subsequently requested to make statutory declaration — Argument that complaint should be supported by statutory declaration — Copy of statutory declaration not given to advocate and solicitor — Legal Profession Act (Cap. 217), s. 86(3), 87.

This was an appeal from the judgment of the High Court, Singapore ([1975] 1 M.L.J. 59) which ordered the appellant to be struck off the roll of advocates and solicitors of the Supreme Court of Singapore. The disciplinary proceedings in the case had started with a complaint addressed by the complainant, Mrs. Seah Huang, to the Law Society of Singapore. This was referred by the Council of the Law Society to an Inquiry Committee appointed under the Legal Profession Act. The Inquiry Committee wrote to the appellant and made further inquiries. The Committee later asked the complainant to make a statutory declaration setting out the facts. No copy of the statutory declaration was sent to the appellant. Subsequently the Inquiry Committee reported to the Council on the complaint and the Council informed the appellant that it had been decided that a full investigation by a Disciplinary Committee should be held. The Disciplinary Committee was appointed by the Chief Justice and after the hearing and investigation the Disciplinary Committee found the appellant guilty of the charges brought against him. The Law Society then applied that the appellant be struck off the Roll or suspended from practice or censured and the High Court ordered that the appellant be struck off the Roll. The appellant appealed to the Privy Council. On the appeal it was contended that section 86(3) of the Legal Profession Act requires that every written complaint should be supported by a statutory declaration or affidavit and that this is a condition precedent to the Inquiry Committee assuming jurisdiction to inquire into and investigate the matter. It was also contended in the alternative that as a statutory declaration was in fact obtained from the complainant the proper inference was that the Inquiry Committee did not begin their inquiry and investigation until this statutory declaration had been received. If so, it was argued it was their duty to provide the appellant with a copy before they embarked on their inquiry. Failure to do so rendered all subsequent proceedings by the Inquiry Committee and the Disciplinary Committee a nullity.

Held, dismissing the appeal: (1) upon its true construction section 86(3) of the Legal Profession Act left to the Inquiry Committee a discretion to decide whether or not a particular written application or complaint should be supported by any statutory declaration or affidavit and if so what statutory declarations or affidavits should be called for and by whom they should be made. If, in their discretion, they did not think any statutory declaration or affidavit to be necessary at that stage they were entitled to begin their inquiry or investigation without it;

(2) in this case both the Disciplinary Committee and the High Court drew the inference from the facts that the inquiry and investigation were begun by the Inquiry Committee before the statutory declaration was obtained from the complainant. This inference was not unreasonable and the finding of the High Court on this point should be accepted;

(3) the argument which was brought before the High Court but not persisted in at the appeal, that the failure to provide the appellant with a copy of the statutory declaration was contrary to the rules of natural justice, was devoid of substance. The appellant had in fact ample notice of what was alleged against him before the Inquiry Committee started their investigation.

Case referred to:-

(1) *Ratnam* v. *Law Society of Singapore* [1976] 1 M.L.J. 195.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

John Newey Q.C. and *Ian Glick* for the appellant.

Robert Gatehouse Q.C. and *Nicholas Lyell* for the respondent.

Lord Diplock (delivering the judgment of the Board): This is an appeal from an Order of the High Court of November 22, 1974 which ordered that the appellant, Mr. Chan, be struck off the Roll of Advocates and Solicitors of the Supreme Court of Singapore. The proceedings which culminated in the Order arose out of his conduct in connection with professional work which he had undertaken in 1972 as solicitor for Mrs. Seah Huay ("the complainant") who was acting as next friend for her son who was then under age. He had sustained an accident in the course of his employment and wanted to claim damages from his employers. Mr. Chan issued a writ on his behalf in the High Court. The action was ultimately settled upon payment by the employers' insurers to Mr. Chan of a sum of $5,000, including costs.

Arising out of his conduct in connection with these proceedings and the settlement, which is set out in detail in the judgment of the High Court and is the subject of concurrent findings of fact by that court and the Disciplinary Committee which heard and investigated the matter, Mr. Chan was charged with having been guilty (1) of grossly improper conduct in entering into an agreement with the complainant to accept as his fee 10% of any damages recovered in the event of success; (2) with fraudulent conduct in representing that the insurers had paid the sum of $3,300 by way of damages; and (3) of fraudulent conduct in deducting from the amount paid to him by the insurers the sum of $1,000 for his costs without disclosing it to the complainant.

The disciplinary proceedings which culminated in the Order striking Mr. Chan off the Roll started with a written complaint addressed by the complainant to the Law Society of Singapore in a letter of November 3, 1972. This was referred by the Council under section 86(1) of the Legal Profession Act (Cap. 217) to an Inquiry Committee appointed under section 85(1). The duty of the Inquiry Committee on receipt of such complaint is set out in section 87 of the Act, the provisions of which, so far as relevant for the purposes of the present appeal, are as follows: —

"87.—(1) Where the Inquiry Committee has —

(a) received a written order;

(b) decided of its own motion to inquire into any matter; or

(c) received a written application or complaint and is satisfied that there may be grounds for such an application or complaint,

it shall inquire into and investigate the matter and report to the Council on the matter.

(2) The Inquiry Committee shall also report to the Council where the Inquiry Committee is satisfied that there are no grounds for such an application or complaint.

....

(5) Before any inquiry or investigation begins in respect of any matter —

(a) the Inquiry Committee shall post or deliver to the advocate and solicitor concerned —

(i) copies of any written application or complaint and of any statutory declarations or affidavits that have been made in support of the application or complaint; and

(ii) a notice setting out any or any further particulars that may be necessary to disclose the reason for the inquiry or investigation and inviting the member concerned, within such period (not being less than fourteen days) as may be specified in the notice, to give to the Inquiry Committee any written explanation he may wish to offer and to advise the Inquiry Committee if he wishes to be heard by the Committee; and

(b) the Inquiry Committee shall allow the time specified in the notice to elapse and shall give the advocate and solicitor concerned reasonable opportunity to be heard if he so desires and shall give due consideration to any explanation he may make.

(6) Subject to the provisions of this Act and to any rules made by the Council under this Act the Inquiry Committee may regulate its own procedure as it deems fit."

The reference in section 87(5)(a)(i) to "any statutory declarations or affidavits that have been made in support of the application or complaint" refers back to section 86(3) which reads as follows: —

"Every written application or complaint received by the Inquiry Committee shall be supported by such statutory declarations or affidavits as the Inquiry Committee may require."

On November 27, 1972, the Inquiry Committee addressed a letter to Mr. Chan in the following terms: —

"Dear Sir,

Pursuant to the provisions of section 87(5) of the Legal Profession Act (Chapter 217) I am directed to forward herewith copy of a letter dated 3rd November, 1972, from Madam Seah Huay of 16B Sian Tuan Avenue, Singapore 21, regarding the conduct of the firm of Chan Chow Wang and Company.

2. The Inquiry Committee has directed me to invite you within fourteen days to give to the Inquiry Committee, in writing, any explanation you may wish to offer and to advise the Committee if you wish to be heard by the Committee.

Yours faithfully,
Secretary
Inquiry Committee,
The Law Society of Singapore."

On the same day, the complainant wrote a further letter to the Law Society elaborating her original complaint. This letter was sent by the Inquiry Committee to Mr. Chan on December 4, 1972. On December 11, Mr. Chan wrote a long letter denying the allegations made in the two letters from the complainant and giving his own version of what had occurred.

There is no direct evidence as to what the Inquiry Committee did between the receipt of Mr. Chan's letter of December 11, 1972, and February 1, 1973. On that date the Secretary of the Inquiry Committee wrote to the complainant telling her that her complaint against Mr. Chan was "being investigated by the Inquiry Committee" and asking her to make a statutory declaration setting out the facts. A statutory declaration was made by the complainant on February 21, 1973. It did no more than repeat the allegations already contained in her two previous letters. No copy of this statutory declaration was sent to Mr. Chan. He did not learn of its existence until the complainant gave evidence on August 1, 1973, before the Disciplinary Committee which by then had been appointed by the Chief Justice under section 91 of the Legal Profession Act to hear and investigate the matter.

There is also no direct evidence as to when the Inquiry Committee reported to the Council of the Law Society on the complaint against Mr. Chan save that it must have been before April 2, 1973, when the Council, as required by section 88(2), informed Mr. Chan that it had been determined that there should be a full investigation by a Disciplinary Committee under section 88(1)(c).

On April 23, 1973, the Chief Justice, acting under section 91, appointed a Disciplinary Committee to hear and investigate the matter. The hearing before the Disciplinary Committee started on July 30, 1973. The charges against Mr. Chan were set out in a written statement of the case against him which repeated in more formal language the allegations of fact contained in the original letters of complaint of the complainant of November 3 and 27, 1972. At that hearing objection was taken by counsel on behalf of Mr. Chan that the Committee had no jurisdiction to hear and investigate the matter because the failure by the Inquiry Committee to provide Mr. Chan with a copy of the complainant's statutory declaration before beginning their own inquiry and investigation rendered all subsequent proceedings a nullity. The Chief Justice, however, ordered the Disciplinary Committee to continue with the hearing. They did so and made their report on July 17, 1974. They accepted the complainant's evidence as to the facts and found that Mr. Chan was guilty of the three charges referred to above. They found him not guilty of a fourth charge. They determined under section 93(1)(c) that cause of sufficient gravity for disciplinary action existed under section 84 of the Act.

The Society, as required by section 94(1), proceeded to make an application to the High Court under section 98 that Mr. Chan be struck off the Roll or suspended from practice or censured. The application was duly heard by a court of three judges of the High Court, presided over by the Chief Justice. They made on November 22, 1974, the Order striking Mr. Chan off the Roll which is the subject of the instant appeal.

Before the High Court, in addition to the argument presented before their Lordships' Board, it appears to have been argued that the failure to provide Mr. Chan with a copy of the complainant's statutory declaration was contrary to the rules of natural justice. Much of the judgment of the High Court is directed to countering this argument. It has not been persisted

in before this Board, and in their Lordships' view is devoid of substance. Mr. Chan had ample notice of what was alleged against him before the Inquiry Committee started their investigation. The statutory declaration of February 21, 1973, added nothing to the allegations contained in the two letters of November 3 and 27, 1972, from the complainant of which he had been supplied with copies. Furthermore, before the hearing by the Disciplinary Committee started, Mr. Chan was supplied with a detailed statement of the case against him, to which he had the opportunity, which he took, of delivering a written reply before the Disciplinary Committee commenced their hearing on the facts. The only argument still relied upon before their Lordships' Board is a submission as to the true construction of sections 86(3) and 87(5)(a)(i) of the Act.

The contention is that section 86(3) which has been set out above requires that every written complaint should be supported by a statutory declaration or affidavit; and that this is a condition precedent to the Inquiry Committee assuming jurisdiction to inquire into and investigate the matter. This, it is said, follows from section 87(5)(a)(i) which requires the advocate and solicitor concerned to be provided with a copy of such statutory declaration or affidavit before "any inquiry or investigation begins."

Their Lordships are of opinion, in agreement with the High Court, that upon its true construction section 86(3) leaves to the Inquiry Committee a discretion to decide whether or not a particular written application or complaint should be supported by any statutory declaration or affidavit and if so what statutory declarations or affidavits should be called for and by whom they should be made. If, in their discretion, they do not think any statutory declaration or affidavit to be necessary at that stage they are entitled to begin their inquiry or investigation without it.

It therefore follows that in their Lordships' view the Inquiry Committee were entitled to begin their inquiry and investigation into the complaint if they so thought fit at latest as soon as they had received Mr. Chan's letter of explanation of December 11, 1972, which was in fact the date when the 14 days' notice given in their letter of November 27 expired.

The alternative argument advanced on behalf of the appellant was that, since in the instant case, a statutory declaration was in fact obtained from the complainant on February 21, 1973, the proper inference of fact to be drawn from this is that the Inquiry Committee did not begin their inquiry and investigation until this statutory declaration had been received. If so it was their duty under section 87(5)(a)(i) to provide Mr. Chan with a copy of this before they embarked on their inquiry and, accepting it to have been decided by this Board in *Ratnam* v. *Law Society of Singapore*[1] that the requirements of section 87(5) are mandatory, the failure to comply with this particular requirement rendered all subsequent proceedings by the Inquiry Committee and the Disciplinary Committee a nullity.

In their Lordships' view, the question whether the Inquiry Committee had begun their inquiry and investigation before the statutory declaration was obtained from the complainant on February 21, 1973, or did not begin it until afterwards is an inference of fact to be drawn from such evidence as was before the Disciplinary Committee and the High Court. Both the Committee and the Court drew the inference that the inquiry and investigation was begun by the Inquiry Committee before February 21, 1973. The explanation for their asking for a statutory declaration at that stage may be that since there was a conflict between the facts as stated by the complainant in her letters of complaint and the facts as stated by Mr. Chan in his reply, the Inquiry Committee thought it prudent to obtain a statutory declaration from the complainant verifying her version of the facts before they made their report to the Council.

The Disciplinary Committee and the High Court are much more familiar than their Lordships with the practice of inquiry committees under the Act and their Lordships would be very loath to interfere with inferences of fact in which the Committee and the Court concur. In their Lordships' view, the inference drawn by the Disciplinary Committee and by the High Court was not unreasonable. They accept the High Court's finding that the Inquiry Committee did begin their inquiry and investigation before February 21, 1973. This is sufficient to dispose of the alternative argument on behalf of the appellant.

Their Lordships accordingly dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Kingsford Dorman & Co.; Parker Garrett & Co.*

MAHAN SINGH v. GOVERNMENT OF MALAYSIA

[Privy Council (Lord Diplock, Lord Edmund-Davies, Lord Russell of Killowen, Lord Scarman and Sir Garfield Barwick) May 8-10 and June 22, 1978]

[Privy Council Appeal No. 5 of 1976]

Administrative Law — Termination of service in the public interest — Permanent officer — Whether officer had been dismissed — Whether officer had right to be heard — Public Officers, (Conduct and Discipline) (General Order Chapter D) Regulations, 1969, reg. 44 — Pensions Ordinance, 1951, ss. 5, 8 and 10 — Federal Constitution, arts. 132(2A) and 135(2).

Constitutional Law — Termination of service in the public interest — When amounting to dismissal — Evidence Act, 1950, s. 123 — Federal Constitution, arts. 132(2A) and 135.

The appellant was an officer of the permanent establishment. As a result of a report made by the officer's head of department, his services were terminated by the Director of Operations under Regulation 44 of General Orders Chapter D. The appellant brought an action against the Government for a declaration that the termination of his service was void. It was argued that the appellant had been dismissed and as no reasonable opportunity had been given to him to be heard, the dismissal was void. In the High Court judgment was given for the appellant, but on appeal ([1975] 2 M.L.J. 155) the Federal Court held in effect that the appellant had not been dismissed and therefore was not entitled to a reasonable opportunity of being heard. The appellant appealed.